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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,165	06/22/2006	Eric Labarriere	12928/10033	4739
26646	7590	01/14/2008		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER PALABRICA, RICARDO J	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 01/14/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,165

Applicant(s)

LABARRIERE ET AL.

Examiner

Rick Palabrica

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) 19-21,26,27,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 16-18,22-25 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/22/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of species E (as shown in Fig. 11), species of screw, with claims 16-18, 22-25, and 28 readable of these species, and amended claim 16, is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 16-18, 22-25, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "the adjacent longitudinal ends" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitations "the maintenance arrangement" and "the adjacent longitudinal ends" in lines 1 and 2, respectively. There are insufficient antecedent bases for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 16, 17 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Christiansen et al. (U.S. 5,490,191) who disclose a terminal end piece and a fuel assembly for a nuclear reactor.

As to claims 16 and 24, Christiansen et al. disclose (e.g., in Fig. 5) a terminal endpiece comprising an arrangement for laterally maintaining the adjacent longitudinal ends 53 of fuel rods 12, the arrangement configured at nodes of a regular network.

Applicant's claim language "terminal end piece" reads on the combination of the lower tie plate 54 and spring element 55. The two elements of this combination represent two components, as in the claim.

Note from Fig. 9a, for example, that the longitudinal end 53 of fuel rod 12 is clamped between a vertical wall of one component (i.e., lower tie plate 54) and the other component (i.e., spring element 55).

As to claims 17 and 25, applicant's claim language " housings " reads on the holes 54e wherein the ends 53 of the rods are disposed (see Fig. 5 and col. 4, lines 48+).

As to claim 22, applicant's claim language, "bottom end-piece" reads on lower tie plate 54.

As to claim 23, applicant's claim language, "feet" reads on the legs 54a, 54b of the lower tie plate 54.

As to claim 28, applicant's claim language "widened feet" reads on the sloping upper part of longitudinal end 53 that is wider than its lower part (e.g., see Fig. 5).

The claims are directed to an apparatus and NOT to a process. However, the claims are replete with statements that are either essentially method limitations or statements of intended or desired use. For example, "for a fuel assembly", "for receiving the adjacent longitudinal ends ..." etc. These clauses, as well as other statements of intended use do not serve to patently distinguish the claimed structure over that of the reference, as long as the structure of the cited references is capable of performing the intended use. See MPEP 2111-2115.

See also MPEP 2114 that states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531.

[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

The apparatus in the cited reference is capable of being used in the same manner and for the intended or desired use as the claimed invention. Note that it is sufficient to show that said capability exists, which is the case for the cited reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christiansen et al. in view of Matzner et al. (U.S. 5,384,814). Christiansen et al. disclose the applicant's claim limitations except for an anti-debris filter.

Matzner et al. a plurality of anti-debris filter suitable for use in a fuel assembly such as Christiansen et al.'s (see, for example, Figs. 2-10).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus, as disclosed by Christiansen et al., by the teaching of Matzner et al., to include an anti debris filter for the fuel assembly, to gain the advantages thereof (i.e., prevent fretting damage to the fuel rods), because such modification is no more than the use of a well-known expedient in the nuclear art.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RJP

January 8, 2008


RICARDO J. PALABRICA
PRIMARY EXAMINER